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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* JOHN FALK KELLEY, JASON THOMAS YUEN,  
MICHAEL P. HECK, and MATTHEW D. GARAY

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Appeal 2007-3231  
Application 10/001,744  
Technology Center 2100

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Decided: February 6, 2008

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*Before* HOWARD B. BLANKENSHIP, ALLEN R. MACDONALD, and  
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal a Final Rejection of claims 1-12 under 35 U.S.C.  
§ 134. We have jurisdiction under 35 U.S.C. § 6(b).

According to Appellants, they invented a method and computer readable medium that aggregates information from a variety of sources into a web page. (Spec. ¶[0025].) A Context Pane provides selectable information objects and tasks for the objects. (*Id.* at ¶[0028].) A Content Pane provides information and task results. (*Id.*)

Exemplary claim 1 is reproduced below:

1. A method for providing information to a user through an Object-Action Navigation paradigm comprising the steps of:

displaying in a web page a Context Pane having one or more selectable objects of interest to a user;

displaying in said web page a plurality of selectable heterogeneous actions associated with an object and responsive to user selection of an associated object;<sup>1</sup>

executing an action script in response to user selection of a selectable action, said action script generating a set of results;<sup>2</sup> and

displaying in said web page to said user said action script results in a Content Pane, said Content Pane containing an aggregation results from a plurality of semi-independent heterogeneous information modules, heterogeneous transactional modules, or both, said information being filtered and sorted according to said user's interest as indicated by a most recent selection in said Context Pane.

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<sup>1</sup> In our analysis, we refer to this step as an “action displaying step.”

<sup>2</sup> In our analysis, we refer to this step as an “executing step.”

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Wecker	US 5,806,077	Sep. 8, 1998
Madnick	US 5,913,214	Jun. 15, 1999
Katinsky	US 6,452,609 B1	Sep. 17, 2002 (filed Nov. 6, 1998)
Nikolovska	US 6,473,751 B1	Oct. 29, 2002 (filed Dec. 10, 1999)

Claims 1-4, 6-10, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Katinsky, Madnick, and Wecker.

Claims 5 and 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Katinsky, Madnick, Wecker, and Nikolovska.

We affirm.

#### FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

##### *Katinsky*

1. Katinsky teaches a web page 10 is used to display content and permit control of display of content. (Col. 3, ll. 43-45.) Web page 10 is called “pageless” because it allows a user to access content on a single web page without having to navigate different web pages. (Col. 3, ll. 47-49.)

2. Katinsky teaches that web page 10 displays multiple tabs 72 and for each tab 72, there is a play list box 44 that displays a listing of content. (Figs. 4, 6B, and 6C.) Each play list box 44 contains a different type of content, such as content concerning movies, news, and technology. (Figs. 6B and 6C.) Katinsky teaches that the list of content can be edited using buttons 60-69. (Fig. 4 and Col. 5, ll. 20-22.)
3. Katinsky teaches that the web page 10 displays multiple operations involving a tab 72 such as a list displaying action whereby selection of the tab displays a list associated with the tab as well as tab moving action that displays a triangular corner marker 74 that causes more tabs to come into view. (Fig. 6C and Col. 5, ll. 50-51 and 62-67.)
4. Katinsky teaches displaying multiple different content items for each tab in a play list 50 at the same time. (Figs. 4 and 6B.)
5. Katinsky teaches that each play list 50 displays content provided by multiple sources. (Col. 9, ll. 34-45 and Col. 10, ll. 1-5 and 14-16.) User database 1014 provides a list of play lists and a list of media objects, interface database 1012 includes information used to display an outline of content and, whereas media servers 1025 host and stream the media objects. (*Id.*)
6. Katinsky teaches that web page 10 is implemented with JavaScript and HTML 4.0 accessed using a web browser. (Col. 4, ll. 21-24.)

## PRINCIPLES OF LAW

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) ("On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.") (quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls."). The Court in *Graham* further noted that evidence of secondary considerations, such as commercial success, long felt but unsolved needs, failure of others, etc., "might be utilized to give light to the circumstances surrounding the origin

of the subject matter sought to be patented.” 383 U.S. at 18. “If a court, or patent examiner, conducts this analysis and concludes the claimed subject matter was obvious, the claim is invalid under § 103.” *KSR*, 127 S. Ct. at 1734.

The Supreme Court emphasized that “the principles laid down in *Graham* reaffirmed the ‘functional approach’ of *Hotchkiss*, 11 How. 248 [(1850)].” *KSR*, 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)), and reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* The operative question in this “functional approach” is thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 1740. “[W]hen a patent ‘simply arranges old elements with each performing the same function it had been known to perform’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *Id.* (citing *Sakraid v. AG Pro, Inc.*, 425 U. S. 273, 282 (1976)).

In *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), the Federal Circuit found no error in the District Court’s determination that a combination of elements was proper in part because Leapfrog had presented no evidence that the inclusion of a reader in the combined device was “uniquely challenging or difficult for one of ordinary

skill in the art” or “represented an unobvious step over the prior art.” *Id.* (citing *KSR*, 127 S. Ct. at 1740-41).

In affirming a multiple reference rejection under 35 U.S.C. § 103, the Board may rely on one reference alone in an obviousness rationale without designating it as a new ground of rejection. *In re Bush*, 296 F.2d 491, 496 (CCPA 1961); *In re Boyer*, 363 F.2d 455, 458, n.2 (CCPA 1966).

## ANALYSIS

### Claims 1-4, 6-10, and 12

Because Appellants do not separately argue any claim in this group (App. Br. 4-7 and Reply Br. 4-7), we select claim 1 as the sole claim on which to decide the appeal of claims in this group.

The Examiner concludes that the combined teachings of Katinsky, Madnick, and Wecker render claim 1 obvious. (Ans. 5-8.) Appellants allege that the cited references do not teach all elements of claim 1 and the Examiner has improperly combined the teachings of the references. (App. Br. 4-6 and Reply Br. 4-7.) We address Appellants’ particular arguments *infra*.

Appellants argue that Katinsky fails to teach use of a web page but rather teaches a pageless design. (App. Br. 5 and Reply Br. 5.) We disagree. The web page 10 is called “pageless” because it allows a user to access content on a single web page without having to navigate different

web pages. (FF 1.) We find that Katinsky teaches use of a web page to display content and allow a user to control display of content. (FF 1.)

Appellants argue that Katinsky fails to teach displaying heterogeneous actions because Katinsky merely teaches playing or presenting media objects, which are not heterogeneous actions. (App. Br. 4-5 and Reply Br. 4.) We disagree. We begin our analysis by construing “heterogeneous actions” of the claimed action displaying step. Appellants’ Specification provides no explicit definition of “heterogeneous actions.” However, Appellants’ Specification does provide examples of different actions such as retrieving, displaying, charting, and searching for different types of information (e.g., press releases, current quotes, and analyst commentaries). (Spec. ¶¶[0042]-[0043].) We note that all of the example actions relate to the display of information. Thus, we broadly but reasonably construe the claimed “heterogeneous actions” to encompass *different* activities related to the display of information. Therefore, we conclude the claimed action displaying step reasonably encompasses displaying, in a web page, both an object and different selectable actions that cause display of information related to the object.

Next, we compare the claimed action displaying step with the cited prior art. Katinsky teaches that the web page 10 displays multiple operations involving a tab 72 such as a list displaying action whereby selection of the tab displays a list associated with the tab as well as tab moving action that displays a triangular corner marker 74 that causes more

tabs to come into view. (FF 3.) The list displaying action and the tab moving action are different actions and both relate to display of information related to the tab. A web page displays the actions and the tab. We find that the tab meets the claimed object and the list displaying action and the tab moving action meet the required different selectable actions that cause display of information related to the object. Accordingly, we find that Katinsky teaches the claimed action displaying step.

Appellants argue that Katinsky fails to teach the executing step by failing to teach executing an action script to process data. (Reply Br. 4.) We disagree. Katinsky teaches that the web page 10, which displays content and permits a user to control display of content, is implemented with JavaScript and HTML 4.0. (FF 6.) Appellants' Specification provides no explicit definition of "action script." However, Appellants do describe using JavaScript as an example manner to detect selection of an action and display pop-up panes. (Spec. ¶[0063].) Accordingly, we broadly but reasonably construe "action script" to encompass some form of executable script. We find that Katinsky teaches executing an action script to process data by teaching executing JavaScript to display content and permit a user to control display of content.

Appellants do not dispute that the combination of cited references teaches a results displaying step comprising "displaying . . . aggregation results from a plurality of semi-independent heterogeneous information modules, heterogeneous transactional modules, or both." Nevertheless,

Appellants contend that Katinsky does not teach the results displaying step because Katinsky fails to teach “*aggregate[ing]* information into a simultaneous display of different informational items as we have claimed.” (App. Br. 4-6 and Reply Br. 4-6.)

We begin our analysis by construing the claimed results displaying step. The claimed results displaying step requires aggregating results from heterogeneous information modules. Appellants’ Specification states that *information modules* in the Content Pane are pre-populated with information based on selection of a company of interest (Spec. 12:12-16) and “the ‘Quotes’ *transactional information module* . . . may be pre-populated with all the quote information about ‘IBM’” (Spec. 17:2-4 (emphasis added)). The examples from Appellants’ Specification relate to the display of content. Accordingly, we broadly but reasonably construe the results displaying step as requiring display of different content at the same time, where content is selected by a user.

Katinsky teaches displaying multiple tabs, where each tab displays a play list of content related to a subject such as movies, news, and technology. (FF 2.) Selection of a tab causes display of a list of content. (FF 3.) Each play list contains multiple *different* content items which are also displayed. (FF 4.) We find that Katinsky’s display of different content in a play list box 44, where the play list box 44 is displayed in response to a user’s action of selecting a tab, meets the claimed results displaying step of

display of different content at the same time, where content is selected by a user.

Moreover, we find that Katinsky teaches the claimed results displaying step in an alternative manner. Specifically, we find Katinsky's display of content from multiple different databases 1012, 1014, and 1025 in a playlist of a tab selected by a user (FF 5) meets the limitations of the claimed results displaying step.

Next, although we need not address this issue because we find that Katinsky teaches elements of claim 1 that Appellants allege are not taught, we nevertheless address Appellants' arguments that "no citation is provided . . . in the cited art" for the combination of the Katinsky, Madnick, and Wecker and that Katinsky teaches away from using traditional page-oriented designs of Madnick and Wecker by teaching the use of a pageless design. (App. Br. 4-6 and Reply Br. 6-7.)

We conclude there was sufficient reason to combine the teachings of Katinsky, Madnick, and Wecker because "when a patent 'simply arranges old elements with each performing the same function it had been known to perform' and yields no more than one would expect from such an arrangement, the combination is obvious." *KSR*, 127 S. Ct. at 1740 (citing *Sakraida*, 425 U. S. at 282). At the time of the invention, combining (a) Katinsky's web page that executes a script to display objects and display user selectable actions for the objects with (b) Madnick's queries used with a web page that join separate responses to aggregate results as well as with (c)

Wecker's displaying results to a user's request changed the functions of none of the combined features of (a)-(c). Moreover, the combination yielded no more than predictable results of displaying heterogeneous content in response to selection of an object and selection of an action. *Id.*

In addition, Appellants have presented no evidence that combining the teachings of Katinsky, Madnick, and Wecker was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Leapfrog*, 485 F.3d at 1162.

We found *supra* that Katinsky does not teach a pageless design as alleged but instead teaches displaying user-controlled content in a web page. Thus, we find unpersuasive Appellants' arguments that Katinsky teaches away from the Examiner's proffered combination with Madnick and Wecker, which both use traditional page-oriented designs (*see* App. Br. 6 and Reply Br. 5).

Because Appellants have not shown that the Examiner erred, we sustain the rejection of independent claim 1 as being unpatentable over Katinsky, Madnick, and Wecker. Claims 2-4, 6-10, and 12, not separately argued by Appellants, fall with claim 1. Thus, we sustain the Examiner's rejection of these claims as being unpatentable over Katinsky, Madnick, and Wecker.

Claims 5 and 11

The Examiner concludes that a combination of Nikolovska with a first combination comprising Katinsky, Madnick, and Wecker render claims 5 and 11 obvious. (Ans. 9-10.) In response, Appellants contend that the combination of the first combination with Nikolovska is improper for “lack of suggestion or motivation in the cited art to make the four-way combination and modification.” (App. Br. 7 and Reply Br. 7.) We found *supra* that the first combination was proper. We note that Appellants do not assert that the combination does not teach all elements of claims 5 and 11. (*Id.*)

Combining the teachings of the first combination with those of Nikolovska maintained the functions of the combined teachings. In other words, at the time of the invention, the first combination’s functions of displaying in a web page aggregated content in response to a user selection action for an object, and Nikolovska’s functions of filtering and sorting content prior to displaying were both maintained. At the time of the invention, we find the combination would have yielded no more than the predictable results of filtering and sorting content prior to displaying heterogeneous content in response to a user selected action associated with an object. Accordingly, we conclude there was sufficient reason to combine teachings of Nikolovska with the first combination. *KSR*, 127 S. Ct. at 1740. In addition, Appellants have presented no evidence that combining the teachings of the references was “uniquely challenging or difficult for one of

ordinary skill in the art” or “represented an unobvious step over the prior art.” *Leapfrog*, 485 F.3d at 1162.

Because we conclude that Appellants have not shown the Examiner erred, we sustain the Examiner’s rejection of claims 5 and 11 as being unpatentable over Katinsky, Madnick, Wecker, and Nikolovska.

#### CONCLUSION OF LAW

(1) Appellants have not shown that the Examiner erred in concluding that claims 1-4, 6-10, and 12 are unpatentable under 35 U.S.C. § 103(a) over Katinsky, Madnick, and Wecker.

(2) Appellants have not shown that the Examiner erred in concluding that claims 5 and 11 are unpatentable under 35 U.S.C. § 103(a) over Katinsky, Madnick, Wecker, and Nikolovska.

(3) Claims 1-12 are not patentable.

#### DECISION

The Examiner's rejection of claims 1-12 under 35 U.S.C. § 103(a) is affirmed.

Appeal 2007-3231  
Application 10/001,744

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

rwk

Robert H. Frantz  
P.O. Box 23324  
Oklahoma City OK 73123-2334